Professional Facilities Management, Inc. *and* International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, Petitioner. Case 12–RC–8043

September 26, 2000

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

This case involves the issue of whether a petitioner may seek to represent an appropriate unit of the employees of a single "user" employer without regard to whether the unit employees are jointly employed by another employer. Consistent with the analysis in our recent opinion in *M. B. Sturgis*, *Inc*., 331 NLRB No. 173 (2000), we find that there is no statutory or policy impediment to such a unit.

On February 7, 1997, the Regional Director for Region 12 issued a Decision and Direction of Election in which she found that the Employer and Easy Staff, Inc., d/b/a Employee Services (ES) were not joint employers of the petitioned-for employees, that ES was not denied adequate notice and opportunity to be heard at the hearing, and that a unit of stagehands, excluding maintenance and operations employees, is an appropriate unit.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that ES is a joint employer, that ES was denied notice and reasonable opportunity to be heard at the hearing, and that the maintenance and operations employees should have been included in the unit. On March 10, 1997, the Board granted the Employer's request for review of the Regional Director's joint employer and due process findings.[1] Neither party filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record in this proceeding, we find that it is unnecessary to reach the joint employer and due process issues, and we remand this case to the Regional Director.

The Employer manages operations of the Coral Springs City Center for the city of Coral Springs, Florida. The Center is used for various entertainment and other activities. The Petitioner sought to represent a unit of stagehands performing work at the Center, naming only the Employer in the petition. At the hearing, the Employer contended that ES, which supplies all of the Employer's stagehands, is a joint employer of the stagehands and that ES's absence from the hearing was a "flaw in the process."[2] The Petitioner declined to amend the petition to add ES as an employer, stating that "we believe [the Employer] is an employer with whom we can bargain collectively, and that's it." The Regional Director found that ES is not a joint employer, that this finding disposed of the due process issues, and that, in any event, ES was provided prior notice and neither appeared at, nor formally sought a postponement of, the hearing. We find it unnecessary to rule on the joint employer and due process findings because the Petitioner seeks to represent employees of a statutory employer in an appropriate unit.

Our holding is guided by our recent decision in *M. B. Sturgis, Inc.*, supra. In *M. B. Sturgis*, we held that a unit composed of employees who are jointly employed by a user employer and a supplier employer, and employees who are solely employed by the user employer, is permissible under the Act without the consent of the employers.[3] We clarified *Greenhoot, Inc.*, supra, a case involving a petition for a supplier's employees, to hold that a petitioner may seek to bargain only with a single supplier employer on behalf of its employees in an appropriate unit, even though the employees may be jointly employed by one or more user employers. 331 NLRB No. 173, slip op. at 11 and 12. As we explained, the fact that a single supplier's employees may also be jointly employed does not require a petitioner to name the joint employers or to litigate the existence of a joint employer relationship. Id., slip op. at 11 fn. 21, citing *Chelmsford Food Discounters*, 143 NLRB 780, 781 (1963).

Here, the Petitioner seeks to represent a bargaining unit consisting only of the employees of a single user employer. In these circumstances, as with a petition seeking a unit only of the employees of a single supplier employer, we will not require the naming of all potential

[1] The Board denied the Employer's request for review of the Regional Director's exclusion of the maintenance and operations employees from the unit.

[2] The Employer, relying on the Board's decision in *Greenhoot, Inc.*, 205 NLRB 250 (1973), also contended that since the smallest appropriate unit combined the stagehands, who were jointly employed by the Employer and ES, and the maintenance and operations employees, who were solely employed by it, the unit constituted a multiemployer unit which required the consent of both employers. This issue, which was addressed by the Board in *Sturgis*, is no longer before us in light of the Board's denial of the Employer's request for review of the Regional Director's exclusion of the maintenance and operations employees from the unit.

[3] In *Sturgis*, the Board addressed whether the units in issue there were multiemployer units. No such issue is presented in this case since the stagehands—all the employees in the appropriate unit—are all supplied by ES. Thus, the stagehands are all either solely employed by the Employer, as the Regional Director found, or are jointly employed by the Employer and ES, as contended by the Employer.

joint employers and the litigation of their potential relationship with the user employer. For the same reasons we cited in *M. B. Sturgis*, we conclude that the absence of one of the alleged joint employers at the bargaining table does not destroy the ability of the named employer (here, the user) to engage in effective bargaining with respect to its employees to the extent it controls their terms and conditions of employment. Id., slip op. at 11 fn. 22.[4] A petitioner may, therefore, seek to bargain with and name in its petition only the single user employer.

In this case, the Petitioner has named only the Employer in its petition, and has in fact explicitly stated that it did so because "we believe [the Employer] is an employer with whom we can bargain collectively, and that's it." It has never sought to amend the petition to name ES as a joint employer of the petitioned-for employees. In these circumstances, there is no need to reach the issue of whether ES, an employer which the Petitioner has not named in its petition, is a joint employer of the unit employees. It follows that the issue raised by the Employer concerning whether ES was denied notice and a reasonable opportunity to be heard is also no longer relevant. The Employer contends that it was denied due process because ES was not given reasonable notice and thus was not present at the hearing to provide further evidence and argument concerning its status as a joint employer of the petitioned-for employees. As we have concluded that the status of ES as a joint employer is no longer a relevant issue in the circumstances of this case, it is unnecessary to reach the due process arguments raised by the Employer.

ORDER

The proceeding is remanded to the Regional Director for further appropriate action consistent with this decision.

[4] Cf. *Management Training Corp.*, 317 NLRB 1355, 1358–1359 (1995). In that case, the Board determined that if an employer meets the statutory definition of "employer" under Sec. 2 (2) of the Act, and meets the applicable monetary jurisdiction standards, it would assert jurisdiction over that employer despite the commercial relationship between the employer and an exempt Government entity. The Board rejected a "joint employer" analysis to decide jurisdiction, finding such status to be "irrelevant." 317 NLRB at 1358 fn. 16. That one party could not be compelled to "sit at the bargaining table does not destroy the ability of . . . employers to engage in effective bargaining over the terms and conditions of employment within their control." Id. (citation omitted). The same logic applies here: the absence of the potential joint employer does not foreclose certification of a union in an appropriate bargaining unit of employees of an employer within the meaning of the Act.